

Proposed Minor Offense Rule Revisions
Explanation of Proposed Changes

1. Rule 2. Minor Offense Defined.

... As used in these rules, "minor offense" means

(e) any offense under statute or municipal ordinance for which a conviction cannot result in incarceration, a fine greater than ~~\$500~~ \$1,000, or the loss of a valuable license; or

There are some offenses that the maximum penalty is \$1,000 with no jail time. They should be considered minor offenses, not criminal. For example, possession of an alcoholic beverage in violation of a local option election has a maximum fine of \$1000 under AS 04.16.205. There are also city offenses with maximum fines of \$1000 (which is the maximum allowed by AS 29.25.070(a)).

2. Rule 3. Citation.

In paragraph 3(i)(1), we expanded the authority of the clerk to return citations for correction.

New paragraph 3(i)(2) authorizes clerks to approve deferral of payment of the fine or surcharge for up to one year from the date of the request. This is already common practice in many courts.

3. Rule 4. Minor Offenses Not Charged on a Citation.

In 2013, the court adopted Rule 9(d) prohibiting the issuance of bench warrants in minor offense cases. The proposed new sentence in subsection 4(d) extends this prohibition to arrest warrants.

4. Rule 5. Optional Court Appearance.

Paragraph (a)(1) requires the defendant to request an arraignment rather than being given an arraignment date on the citation. At a teleconference in February 2013, we learned that defendants often do not appear for pre-scheduled arraignments. This caused unnecessary clerical work to prepare for arraignments and wasted calendaring time that could be used for other hearings. When the proposal to require defendants to request an arraignment was circulated for comment, the response was overwhelmingly in favor of the new procedure. In 2013, the citation was amended to reflect this procedure. There have been no reported problems with this new procedure.

Paragraph (a)(4) is being amended to allow proof of correction to be made to the court if a municipal ordinance authorizes it. For example, AMC 9.28.030.B concerning proof of insurance.

Subsection (b) currently concerns defendants who submit payment without signing the citation. The proposal will expand the circumstances under which a judgment will be entered to include defendants making a payment online, making full or partial payment without submitting a no contest plea, or submitting a no contest plea with partial payment or no payment.

New subsection (c) establishes a procedure to allow payee cities to request entry of a judgment when a defendant submits a plea of no contest without payment or makes a partial payment to the municipality. Note: Administrative Bulletin 39 defines "payee city" as a municipality in which citations for optional court appearance offenses are filed with the municipality and defendants send their responses to the citation to the municipality.

5. Rule 6. Mandatory Court Appearance.

New subsection (b) will allow defendants who are charged with a mandatory court appearance offense to either appear for arraignment submit or submit a plea of not guilty. This will eliminate the need for defendants to appear for arraignment when they already know they want to plead not guilty.

6. Rule 7. Pleas.

Subsection (a) adds the option of a guilty plea. We were notified by Magistrate Roger that prosecutors still require guilty pleas in Rule 11 cases for fish and game offenses, especially commercial fishing offenses. The current rule allows only no contest pleas because AS 12.25.195 provides that a defendant may dispose of a optional court appearance offense by submitting the bail or fine together with a "entry of plea of no contest". However, not all minor offenses are optional court appearance offenses.

7. Rule 8. Defendants Under 18.

The proposed new sentence clarifies that defendants under age 18 do not need parental consent to enter a plea or submit proof of compliance. Courts do not currently require consent.

8. Rule 9. Failure to Respond or to Appear.

Paragraph (a)(3) adds a requirement that the “request and affidavit for default judgment” must be on a form approved by the administrative director. This will ensure that municipalities have complied with the requirements of the rule.

Subsection (c) is being revised at the suggestion of Delta Junction Magistrate Tracy Blais. It is being revised because of the change in procedures in Rule 5 (see #4 above) which requires defendants to request an arraignment if defendant wants one. Currently, if a defendant fails to appear for arraignment, Rule 9 requires the clerk to send the defendant a warning notice before entering default judgment. Under the proposed change, the notice of arraignment will include the consequences of failing to appear, and the additional notice will no longer be required. This is the same procedure that is used for trials.

9. Rule 11. Dismissal and Deferred Prosecution.

Subsection (a) authorizes dismissals of minor offenses by the prosecuting attorney’s representative. This issue came up at the 2013 statewide magistrate conference. The magistrates indicated that prosecutors normally do not appear for minor offense hearings, including trials, and that officers have historically been allowed to dismiss cases without approval of the prosecutor. When this rule was created in 2013, it was based on Criminal Rule 43(a). Some courts have continued to allow officers to dismiss minor offense cases, but some courts require a written dismissal by the prosecutor. This has created additional work for the officer, the prosecutor, and the court. The consensus at the magistrate conference was that the rule should be amended to authorize officers to dismiss citations. The reason for cross-referencing Rule 12 for the definition of the prosecutor’s representative is to have one rule governing the authority of the representative.

Paragraph (b)(3) clarifies that the court may not dismiss a minor offense condition upon a defendant paying a fine, completing a defensive driving course, completing community work service or other conditions.

We believe there is no statute or rule authorizing a judge to dismiss citations based on a defendant paying a fine, completing DDC, CCW or other conditions. Some judicial officers appear to be justifying such dismissals by calling them deferred sentencing or suspended imposition of sentence. There is no rule or statute authorizing “deferred sentencing”; and SISs end with “discharge” and “set aside”, not dismissal. Note: Judicial officers disagree whether SISs are allowed in minor offense cases.

10. Rule 12. Non-Attorney Representation

Section (a) is amended to authorize “the officer who issued the citation or other employee authorized by the agency that issued the citation” to represent the state or municipality in the prosecution of minor offenses. The reason for including “other employee” is for cases in which the issuing officer is no longer available.

This section was also amended to authorize the representative to dismiss charges as explained in the explanation of the changes to Rule 11 above.

The last sentence was amended to delete the requirement that a representative who is not employed by the plaintiff must be authorized by the plaintiff to represent it. For example, if a municipal officer charges a state offense, the State of Alaska would no longer need to authorize the officer to represent the state at trial.

11. Rule 13. Temporary Transfer of Minor Offense Cases.

Sections (b) and (e) are amended for two reasons. Currently, the rule authorizes temporary transfers only for mandatory court appearance offenses and cases in which a bench warrant had been issued.

When these rules were amended in 2013, bench warrants in minor offense cases were eliminated. However, this rule was not updated to reflect that change. Failure to amend this rule at that time was an oversight.

It no longer seems necessary to limit temporary transfers to mandatory court appearances. The amended would allow defendants to request an arraignment at the court nearest their place of residence or employment for either optional or mandatory court appearance offenses.

12. Rule 17. Minor Offense Joined with Related Criminal Offense.

Section (b) is amended because Rule 18 no longer requires certain minor offenses to be filed as criminal cases.

Section (e) currently provides that criminal rules apply to minor offenses that are joined with related criminal offense. The amendment provides that the criminal rules also apply to minor offenses when a criminal offense is amended to a minor offense.

This section also sets out the procedure for entering a default judgment for a minor offense filed in a criminal case if the defendant fails to appear. Finally, this section prohibits the issuance of a bench warrant for a minor offense filed in a criminal case if all related criminal charges have been disposed. If bench warrants are prohibited in minor offense cases, it seems unreasonable to allow

them for minor offense charged in a criminal case when the default judgment option is available.

13. Rule 23. Exhibits.

The amendment clarifies how exhibits in minor offense cases must be handled.